



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 26, 1993

Mr. Jeff Hankins  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR93-535

Dear Mr. Hankins:

The Texas Department of Insurance (the "department") received a request for "information contained in the advertising files for Transport Life Insurance Company and Pioneer Life Insurance Company for the years 1988, 1989, 1990, 1991 and 1992" and requested a decision of this office pursuant to section 7 of the Texas Open Records Act (the "act"), V.T.C.S. article 6252-17a. You claimed that sections 3(a)(1), 3(a)(3), 3(a)(7), and 3(a)(11) of the act except the requested information from required public disclosure. In Open Records Letter No. 93-015 (1993), this office partially disposed of your request, ruling that section 3(a)(1) in conjunction with section 5(a) of article 1.10D of the Insurance Code excepts from public disclosure the records pertaining to Transport Life Insurance Company. Because the decision in *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ) required reexamination of the section 3(a)(11) exception, we allowed you an additional 15 days to submit arguments in accordance with the *Gilbreath* decision. We now address your claim that information concerning Pioneer Life Insurance Company is protected by sections 3(a)(7) and 3(a)(11) of the act. We have assigned your request ID# 18729.

You seek to withhold one document under section 3(a)(7) of the act, specifically, a document dated July 10, 1991, from F.J. Marek, Insurance Technician, to Karen Thrash, Staff Attorney. Section 3(a)(7) excepts:

matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas are prohibited from disclosure, or which by order of a court are prohibited from disclosure. [Footnote omitted.]

In Open Records Decision No. 574 (1990), this office held that section 3(a)(7) protected information that revealed client confidences to an attorney or that revealed the attorney's

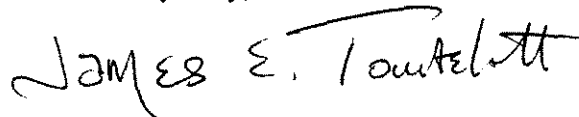
legal advice. We have examined the document and conclude that it may be withheld from required public disclosure in its entirety under section 3(a)(7).

You also claim that some of the requested information constitutes "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency" under section 3(a)(11) of the act and, therefore, is excepted from public disclosure. In Open Records Decision No. 615 (1993) (copy enclosed), this office recently reexamined the section 3(a)(11) exception and held that section 3(a)(11) excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency employees as to policy issues. *Id.* at 5-6. In addition, section 3(a)(11) does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5.

Some of the documents you have submitted for our review clearly do not constitute internal memoranda containing communications between department employees. Such documents, *e.g.*, correspondence to the department from Pioneer Life Insurance Company and correspondence to Pioneer Life Insurance Company from the department, do not fall within the section 3(a)(11) exception in any event. The remaining documents, however, constitute "inter-agency or intra-agency memorandums or letters" and pertain to the policy functions of the department. Some of the information contained in these documents is purely factual. We have marked those portions of the documents that may be withheld from required public disclosure under section 3(a)(11). The remainder of the submitted information, except as noted above, must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



James E. Tourtelott  
Assistant Attorney General  
Open Government Section

JET/GCK/jmn

Enclosures: Open Records Decision No. 615  
Marked Documents

Ref.: ID# 18729

cc: Ms. Sally Starnes  
Law Clerk  
Longley & Maxwell  
1609 Shoal Creek Boulevard, Suite 100  
Austin, Texas 78701  
(w/o enclosures)